IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10317 OF 2004

Arpit B. Shah & Ors. : Petitioners

V/s.

University of Pune & Ors. : Respondents

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Mr. A. V. Anturkar instructed by Mrs.Vinita V. Bakre-Shastry for the petitioners.

Mr. G.S. Kulkarni instructed by M.G. Kulkarni for respondent Nos.1 & 2.

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**CORAM : DALVEER BHANDARI, C.J. &**
**S.A. BOBDE, J.**

DATE : MARCH 4, 2005.

**P.C.**:

1. The petitioners are students of Five-Year course of B.Arch. for which a degree is awarded by respondent No.1, Pune University. They have completed their First Year B.Arch. course for the year 2003-04. The petitioners seek a direction from this Court to the University to allow them to appear for the Second Year B.Arch. course which is due in the month of April 2005 and to allow them to attend the College for the Second Year B.Arch. Course.

2. The main contention raised on behalf of the petitioners is that they are entitled to appear for the Second Year B.Arch. Examination since they are entitled to the benefit of the rule which allows them to keep terms i.e. ATKT.

3. Admittedly, the petitioners have been unsuccessful in passing the subject of “Building Construction and Materials-1”. According to them, this was due to a defect in the question paper itself. This is denied by the respondents and we do not propose to decide this controversy. The only question is whether the petitioners, having failed in the subject of “Building Construction and Materials-1” in the First Year B.Arch. Examination are entitled to admission to the Second Year B.Arch. The respondent no.3 College of Architecture has cancelled their admission to the Second Year.

4. Rule 4 which governs promotion of a student to a higher class reads as follows:-

Rule no.4: Prerequisites for admission to higher

classes (As stipulated by Council of Architecture)

1. No student shall be promoted from 1st year to 5th year if he/she has failed in Architectural Design and Building Construction.

2. No student shall be promoted to 4th year B.Arch. unless he has passed in 1st, 2nd and 3rd year B. Arch.

3. A candidate must pass Third year examination in Architecture within five years of first admitted to First year B. Arch.

4. The percentage of passing shall not be less than 45% in each subject head and shall not be less than 50% in aggregate."

5. Admittedly, the petitioners cannot be said to have passed the First Year examination, but they say that they be allowed to keep terms. The rules which govern ATKT is rule 5

which reads as follows:-

"Rule no.5 : RULES OF A.T.K.T.

As a general rule a student shall be allowed to keep term for the next year of study of the course if he/she has a backlog of not more than TWO HEADS of passing in the preceding year except Architectural Design and Building Constitution.

a) A student shall be allowed to keep term for the Second Year B. Arch. Course if he/she has a backlog of not more than TWO HEADS of passing in Theory/sessional/Viva-voice examination at First Year B.Arch. except Architectural Design and Building Construction.

b) A student shall be allowed to keep

term for the Third Year B. Arch. Course, if he/she has no backlog of First Year B.Arch. and if he/she has a backlog of not more than TWO HEADS of passing in Theory/sessional/Viva-voice examination at Second Year B.Arch. except Architectural Design and Building Construction.

c) A student shall be allowed to keep term for the Fourth Year only if he/she has no backlog of First, Second and Third year B.Arch.

d) A student shall be allowed to keep term for the Final Year B.Arch Course, if he/she has backlog of not more than TWO HEADS of passing in Theory/sessional/Viva-voice examination at Fourth Year B.Arch.

except Architectural design and Building Construction.

Note: Special concession to students failed in Fourth Year B.Arch.

The students having failed in Fourth Year will be allowed provisional admission to Final year term 1. They will be allowed to complete the term of Practical Training and appear for the Viva-voice Examination at the end of the term. They will be required to appear for the Fourth Year examination and pass in the Examination/obtain A.T.K.T. and then only they will be allowed to seek admission to Final Year term II in the next academic year."

6. It is clear that under the rules of ATKT, a student who has not passed Architectural Design and Building Construction is not entitled to keep terms because, successful passing of either of these subjects is vital to the acquisition of the degree. The learned

counsel for the petitioners contended that the petitioners have not failed in the subject of “Architectural Design and Building Construction”, but they have failed in the subject of “Building Construction and Materials-1” and, therefore, they are entitled to keep terms. This contention is strongly denied on behalf of the respondents who have in their affidavit-in-reply stated that the subject “Building Construction and Materials-1” is a part of “Building Construction”.

7. Having examined the matter, it is clear that an important component of the subject in which the petitioners have failed i.e. the subject of “Building Construction and Materials-1” is “Building Construction” and that is how the rule is also understood

by the respondents. Whether a student fails in Building Construction as a subject by itself or in combination with another subject makes no difference. Therefore, we are of view that the petitioners are not entitled to keep terms.

8. Under these circumstances, there is no merit in the petition which is hereby dismissed.

Sd/-

CHIEF JUSTICE

Sd/-
S.A. BOBDE, J.